

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 2 9 53 AM '03
FCC 03M-36
02563

In the Matter of) EB Docket No. 03-85
)
BUSINESS OPTIONS, INC.) File No. EB-02-TC-151
)
Order to Show Cause and Notice of) NAL/Acct. No. 200332170002
Opportunity for Hearing) FRN: 0007179054
)

ORDER

Issued: August 29, 2003

Released: September 2, 2003

This is a ruling on Motion to Establish a Revised Procedural Schedule and Hearing Dates, filed by Business Options, Inc. ("BOI") on August 28, 2003. BOI seeks a postponement of the hearing until January 2004. BOI represents that the Enforcement Bureau ("Bureau") supports the Motion and concurs with its substance.¹

This case has been set to be heard on October 21, 2003. *See Order* FCC 03M-18, released May 23, 2003. Since setting the hearing date, the Presiding Judge granted an unopposed Bureau request to enlarge the issues. *See Order* FCC 03M-33, released August 20, 2003. The Bureau has indicated that it will need further discovery on the added issues and advises that it will not be in a position to take depositions until October 2003. The Bureau has also indicated that it would prefer to try all issues at one hearing session rather than bifurcate this hearing. Bureau counsel has suggested that a new hearing date be set in January 2004.

BOI represents that it is now at the "brink of insolvency" due to a loss of business and the expense of litigation of this case. BOI states that the company's revenue and customer base have declined steadily over the last 12 – 18 months. As a result, BOI has let go nearly 40% of its workforce in the past year. BOI suggests that it may be able to reverse its business spiral over the next few months by cutting costs. The most significant cost it has at present are the costs of this litigation. Also, if the same witnesses are required to testify twice in Washington, D.C., there would be extra transportation costs plus the use of twice the time of key business executives.

The parties also are engaged in settlement negotiations. BOI argues that in order to move the settlement process forward, there needs to be an accounting of any fees owed by BOI under the universal service support program [47 C.F.R. § 54.706], involving the completion of Form 499-A filings that BOI will make with NECA. The Bureau also

¹ The subject matter of this *Order* was discussed in an informal telephone conference on August 27, 2003.

seeks such data in its discovery on the added issues. It appears that completion of internal BOI auditing and further negotiations could obviate the need for trial by disposing of this case with an appropriate settlement.

Ruling

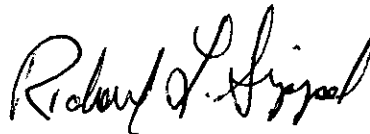
There is merit to BOI's argument that unique efficiencies apply under the circumstances here that justify a reasonable postponement of the hearing. The Commission rules provide that continuances may be granted by a Presiding Judge for good cause shown. *See* 47 C.F.R. § 1.205. It appears that good cause has been shown by BOI and, in the discretion of the Presiding Judge, the current procedural and hearing dates will be reset.

Accordingly, IT IS ORDERED that the hearing date of October 21, 2003, and related procedural dates set under *Order* FCC 03M-18 ARE CANCELLED.

IT IS FURTHER ORDERED that the hearing and procedural dates ARE RESET as follows:²

November 21, 2003	Complete Discovery
December 19, 2003	Exchange Direct Cases
December 23, 2003	Notification of Witnesses Requested for Cross-Examination
December 30, 2003	Objections to Witnesses Requested for Cross-Examination
January 7, 2004	Trial Briefs Exchanged
January 13, 2004	Hearing at 9:30 a.m. in Hearing Room TW-A363

FEDERAL COMMUNICATIONS COMMISSION³



Richard L. Sippel
Chief Administrative Law Judge

² These dates were proposed by the parties.

³ Courtesy copies of this *Order* were sent to counsel for the parties by fax or e-mail on the day of issuance.